

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Thomas Juliano	Team: Squad #6	CCRB Case #: 202105156	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 10/26/2018 4:00 PM	Location of Incident: § 87(2)(b)	Precinct: 34	18 Mo. SOL 4/26/2020	EO SOL 12/11/2020	
Date/Time CV Reported Mon, 08/30/2021 12:40 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 08/30/2021 12:40 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Angela Polanco-Brito	04956	939240	WARRSEC
2. SGT Roy Kim	00000	947132	063 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Peter Toale	18531	959303	034 PCT
2. POM Michael Tierney	29669	962841	034 PCT
3. PO Geoffrey Bartalsky	29486	953667	034 PCT
4. DT3 Javish Ortiz	04152	933130	040 DET
5. DT2 John Scozzafava	04231	923148	DB MNHM
6. PO Carina Herrera	23623	952846	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Angela Polanco-Brito	Abuse: Police Officer Angela Polanco-Brito threatened to damage § 87(2)(b) property.	§ 87(2)(b)
B.SGT Roy Kim	Abuse: Sergeant Roy Kim threatened to damage § 87(2)(b) property.	§ 87(2)(b)
C.POF Angela Polanco-Brito	Abuse: Police Officer Angela Polanco-Brito entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
D.SGT Roy Kim	Abuse: Sergeant Roy Kim entered § 87(2)(b) in Manhattan.	§ 87(2)(b)
E.SGT Roy Kim	Abuse: Sergeant Roy Kim damaged § 87(2)(b) property.	§ 87(2)(b)
F.SGT Roy Kim	Abuse: Sergeant Roy Kim searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
G.POF Angela Polanco-Brito	Abuse: Police Officer Angela Polanco-Brito searched § 87(2)(b) in Manhattan.	§ 87(2)(b)
H.POF Angela Polanco-Brito	Abuse: Police Officer Angela Polanco-Brito seized § 87(2)(b) property.	§ 87(2)(b)

Case Summary

On August 30, 2021, § 87(2)(b) filed this complaint with the CCRB via the online website on behalf of herself and her mother, § 87(2)(b).

On October 26, 2018, § 87(2)(b) who was 15-years-old at the time of this incident, was home alone at her mother's apartment, located at § 87(2)(b) in Manhattan, when PO Angela Polanco-Brito of the 34th Precinct knocked on the apartment door. PO Polanco-Brito told § 87(2)(b) that if she did not exit the apartment that she would break the door down (**Allegation A – Abuse of Authority:** § 87(2)(g) Sgt. Roy Kim and members of the 34th Precinct responded to the location as backup. Sgt. Kim told § 87(2)(b) that if she did not exit the apartment that he would break the door down (**Allegation B – Abuse of Authority:**

§ 87(2)(g) § 87(2)(b) opened the door and Sgt. Kim and PO Polanco-Brito entered the apartment and arrested § 87(2)(b) (**Allegations C and D – Abuse of Authority:** § 87(2)(g) After § 87(2)(b) was in custody, Sgt. Kim ordered officers to kick open a locked door to look for § 87(2)(b) § 87(2)(b) who was wanted on an I-Card (**Allegations E and F – Abuse of Authority:** § 87(2)(g) PO Polanco-Brito searched the apartment for § 87(2)(b) cellphone and seized five of § 87(2)(b) cellphones (**Allegations G and H – Abuse of Authority:** § 87(2)(g)

§ 87(2)(b) was charged with Assault 2. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Three BWC videos of this incident were obtained and can be found in IAs #48-50. A summary of the footage can be found in IAs #75-79.

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Angela Polanco-Brito threatened to damage § 87(2)(b) property.

Allegation B – Abuse of Authority: Sergeant Roy Kim threatened to damage § 87(2)(b) property.

Allegation C – Abuse of Authority: Police Officer Angela Polanco-Brito entered § 87(2)(b) in Manhattan.

Allegation D – Abuse of Authority: Sergeant Roy Kim entered § 87(2)(b) in Manhattan.

PO Polanco-Brito's BWC footage, starting at the 00:00 mark of the timestamp visible at the bottom of the screen, shows PO Polanco-Brito and her partner, PO Carina Herrera, approaching § 87(2)(b) who stands in her apartment with the door open, and asking if her mother, § 87(2)(b) is home. § 87(2)(b) explains that she is not and identifies herself. PO Polanco-Brito asks § 87(2)(b) why she did not call her back, and tells § 87(2)(b) that she needs to come with her to the office as they need to talk about something that happened in the past. § 87(2)(b) offers to speak but only at the residence, but PO Polanco-Brito refuses. § 87(2)(b) says that she is not going anywhere without her mom who was at a doctor's appointment. PO Polanco-Brito asks § 87(2)(b) to call § 87(2)(b) and § 87(2)(b) closes the door. At 02:41, § 87(2)(b) tells the officers through the door that § 87(2)(b) dropped the charges. The officers tell § 87(2)(b) that they need to speak to her mother. § 87(2)(b) tells the officers that they can call her mother. At 03:15, PO Polanco-Brito orders § 87(2)(b) to open the door repeatedly. § 87(2)(b) responds by asking why she needs to open the door. At 03:22, PO Polanco-Brito asks § 87(2)(b) "You want to do it in the rough way? I'll do it in the rough way § 87(2)(b) I could call right now the SWAT team and they're gonna come and break into the door and you're gonna go. Is that the way you want to do it?" § 87(2)(b) refuses. PO Polanco-Brito responds, "It's either two ways. You want to do it like that we gonna get you anyway. I'm not going to get into a fight with you, you're 15 years old. I'm trying to talk to you nicely. I have no problem whatsoever to call people to come to break into the door. I have all the right to do so if I want to, and then you're going to get into

trouble.” § 87(2)(b) accuses PO Polanco-Brito of harassing her. PO Polanco-Brito asks § 87(2)(b) if she forgot what she did to her mother. At 04:32, PO Polanco-Brito again tells § 87(2)(b) that she is going to make a phone call and get officers to break down the door and take her. § 87(2)(b) opens the door and calls her mother on speaker phone. § 87(2)(b) tells the officers that she dropped the charges. PO Polanco-Brito tells § 87(2)(b) that she has to go. § 87(2)(b) tells PO Polanco-Brito that § 87(2)(b) is coming home and that they will go together – § 87(2)(b) then closes the door. § 87(2)(b) is heard continuing to speak to § 87(2)(b) on the phone in the apartment.

At 07:00, PO Polanco-Brito requests additional officers for an emergency. § 87(2)(b) tells the officers through the door that they cannot break into her house. PO Polanco-Brito tells § 87(2)(b) that they will wait for her mother, father, or grandmother to come. At 11:20, § 87(2)(b) tells PO Polanco-Brito that she needs permission from a judge to break down the door, and PO Polanco-Brito says she has permission. § 87(2)(b) asks to see the permission. PO Polanco-Brito refuses to show anything and states, “I have the paper.”

At 12:00, Sgt. Kim arrives on scene. PO Polanco-Brito tells § 87(2)(b) that she is either going to open the door or they will break the door. § 87(2)(b) asks to see the paper, and PO Polanco-Brito tells § 87(2)(b) that she has it in her hand and that she has to open the door to see it. § 87(2)(b) tells the officers that her mother is on the way. At 12:40, Sgt. Kim asks PO Polanco-Brito if the paper is a warrant, and PO Polanco-Brito responds that it is an I-Card. Sgt. Kim looks at the I-Card then says to § 87(2)(b) that he is the supervisor and that if she does not open the door that he will take the door. At 13:34, § 87(2)(b) cracks open the door and tells the officers that her mom is coming. Sgt. Kim pushes the door open and he and PO Polanco-Brito enter past the threshold and tell § 87(2)(b) to exit the apartment, which she does. The officers then handcuff § 87(2)(b) **(Board Review 01)**.

§ 87(2)(b) statement was consistent with the BWC footage with the following exceptions. She testified that PO Polanco-Brito arrived at the apartment and demanded that she open the door. § 87(2)(b) explained that her mother was not home, and PO Polanco-Brito responded that she had a warrant, and that if § 87(2)(b) did not open the door that she would break it down. Sgt. Kim arrived on scene and reiterated that they had a warrant and that § 87(2)(b) needed to open the door. § 87(2)(b) opened the door to look at the paper, and Sgt. Kim forced open the door and placed her into handcuffs **(Board Review 02)**.

A statement from § 87(2)(b) was not obtained as she was deceased at the time this complaint was filed.

PO Polanco-Brito testified that approximately six months prior to this incident, Cristobal Taveras, § 87(2)(b) father, went to the 34th Precinct and spoke with PO Polanco-Brito. § 87(2)(b) filed a complaint that § 87(2)(b) and § 87(2)(b) were involved in sex trafficking. As a consequence, the Major Case section began an investigation into human trafficking at the § 87(2)(b) residence. Approximately one week prior to this incident, § 87(2)(b) reported that § 87(2)(b) § 87(2)(b). Because PO Polanco-Brito was the Domestic Violence officer, as per NYPD policy, PO Polanco-Brito was required to conduct a home visit to check on § 87(2)(b) well-being and discuss the incident. Prior to conducting the home visit, PO Polanco-Brito checked the names of the people in the residence so that she would know who she might interact with. When she conducted searches, she saw that § 87(2)(b) lived in the apartment, and that he was a very dangerous person with an extensive rap sheet of criminal activity. Based on his prior arrest history, PO Polanco-Brito believed that § 87(2)(b) may have tried to hurt any officers who responded to the § 87(2)(b) residence. At some point, either § 87(2)(b) or § 87(2)(b) had an order of protection against him.

§ 87(2)(b) had made multiple domestic violence-related complaints against § 87(2)(b) in the past. PO Polanco-Brito feared § 87(2)(b) based on his criminal history alone. She could not specifically remember any charges that led her to fear him, but she remembered that he was wanted.

On October 26, 2018, at approximately 2:36 p.m., PO Polanco-Brito went to § 87(2)(b) in Manhattan. She was conducting a home visit for § 87(2)(b) but she knew that if § 87(2)(b) was present, she would have to arrest § 87(2)(b). PO Polanco-Brito knew that this was not § 87(2)(b) residence. However, she walked around the apartment complex and asked neighbors if they had seen § 87(2)(b). Based on all a conversation with a neighbor and the super, PO Polanco-Brito gathered that § 87(2)(b) may have been inside the apartment, and that if he was, he was potentially very dangerous. PO Polanco-Brito knocked on the apartment door and § 87(2)(b) opened the door. At that moment, PO Brito had probable cause to arrest § 87(2)(b) based on the I-Card. PO Polanco-Brito told § 87(2)(b) § 87(2)(a) suddenly slammed the front door. PO Polanco-Brito heard a conversation inside. She heard what sounded like talking and walking inside the back of the apartment. PO Polanco-Brito called for assistance because she did not want to go into the apartment with only her and PO Herrera present. Sgt. Kim, along with other officers from the 34th Precinct, responded. PO Polanco-Brito told Sgt. Kim to be careful because § 87(2)(b) was dangerous. § 87(2)(b) opened the door and said something like, “My mom’s friend is there.” She pointed toward the room in the back of the apartment. PO Polanco-Brito immediately believed that § 87(2)(b) was referring to § 87(2)(b) and became concerned that he was hiding in the back of the apartment. PO Polanco-Brito did not remember any officer holding up a piece of paper and pretending that it was a warrant. The officers then placed § 87(2)(b) in handcuffs and entered the apartment (**Board Review 03**).

Sgt. Kim testified that he responded to the location as back-up, as per PO Polanco-Brito and PO Herrera’s request. PO Polanco-Brito told him that § 87(2)(b) informed him that § 87(2)(b) § 87(2)(b) who was the top I-Card perpetrator in the precinct at the time, was inside of the apartment. PO Polanco-Brito further told Sgt. Kim that § 87(2)(b) was wanted for § 87(2)(b) § 87(2)(b). Sgt. Kim did not remember if he had knowledge of § 87(2)(b) before this incident, was not aware of any kind of order of protection, or anything that barred § 87(2)(b) from living at the location. Sgt. Kim did not recall knowing anything about the relationship between § 87(2)(b) and § 87(2)(b) at the time of the incident. Sgt. Kim responded to the scene in a supervisory capacity. PO Polanco-Brito and PO Herrera were outside of the closed front door into the apartment and were communicating with § 87(2)(b) through the door. PO Polanco-Brito told Sgt. Kim that § 87(2)(b) was inside of the apartment was “very possibly armed.” Sgt. Kim received no further clarification regarding how this was known and did not remember how PO Polanco-Brito could have known this. PO Polanco-Brito tried to gain compliance from § 87(2)(b) to open the door. § 87(2)(b) responded verbally through the closed door but was unintelligible and the tone of her voice, which was high pitched and strained, indicated to Sgt. Kim that she was distressed. Sgt. Kim did not remember if § 87(2)(b) said anything regarding whether § 87(2)(b) was inside of the apartment. Sgt. Kim also did not remember whether anyone told § 87(2)(b) that there was a warrant. There were no signs that there was anybody else inside of the apartment. Sgt. Kim did not take steps to figure out if anybody else was inside of the apartment besides § 87(2)(b). Either PO Polanco-Brito or PO Herrera, Sgt. Kim could not recall, told Sgt. Kim that they thought § 87(2)(b) was in the bedroom of the apartment. Sgt. Kim gave a warning through the door that, unless § 87(2)(b) opened the door, he would force the door open. This warning was given because of the exigent circumstances, which included the fact that § 87(2)(b) was a violent felon with sexual offenses against § 87(2)(b) and the concern that § 87(2)(b) was being held under duress and was therefore unable to open the door. Sgt. Kim intended to place § 87(2)(b) under arrest. Sgt. Kim

did not have time to obtain a warrant and, citing Patrol Guide 217, believed that it was necessary to perform an emergency removal without a warrant and that, as a supervisor, the procedure stated that he could open the door if a minor was in danger. Sgt. Kim did not recall asking § 87(2)(b) whether § 87(2)(b) was inside of the apartment. § 87(2)(b) complied and opened the door after Sgt. Kim gave the warning. § 87(2)(b) said that § 87(2)(b) was not inside of the apartment. Another officer placed § 87(2)(b) in handcuffs, and she was under arrest at that time. Sgt. Kim did not remember why § 87(2)(b) was under arrest and was not sure whether he knew that it was because of her I-Card at the time. Sgt. Kim was not sure whether PO Polanco-Brito wanted to arrest § 87(2)(b) upon gaining access to the apartment and believed that the primary concern of the officers on the scene was § 87(2)(b) safety. Sgt. Kim and PO Polanco-Brito then entered the apartment.

Sgt. Kim was shown PO Polanco-Brito's BWC footage. Sgt. Kim identified the paper at the beginning of the video as § 87(2)(b) I-Card, but this did not refresh Sgt. Kim's recollection of PO Polanco-Brito's intention to arrest her. Sgt. Kim did not believe that the I-Card was a sufficient reason to enter the apartment. Sgt. Kim also recalled the moment in which § 87(2)(b) told the officers that nobody was inside of the apartment. Sgt. Kim believed that § 87(2)(b) was being untruthful based on the information he received from PO Polanco-Brito (**Board Review 04**).

A request for I-Cards for § 87(2)(b) yielded negative results (**Board Review 05**).

Officers may enter an apartment without a warrant or probable cause where there is voluntary consent to enter. People v. Gonzalez, 39 N.Y.2d 122 (1976) (**Board Review 06**). Searches and seizures inside a home without a warrant are presumptively unreasonable. There are a few exceptions to entering a premise without a warrant, including consent, exigent circumstances, or emergency situations. The factors for exigency include: 1) the gravity or violent nature of the offense with which the subject is to be charged, 2) whether the subject is reasonably believed to be armed, 3) a clear showing of probable cause to believe the suspect committed the crime, 4) strong reason to believe that the suspect is in the premises being entered, 5) a likelihood that the suspect will escape if not swiftly apprehended, and 6) peaceful circumstances of the entry. People v. McBride, 14 N.Y.3d 440 (2010) (**Board Review 07**).

Warrantless entries into private homes are considered unconstitutional. Exceptions to this rule include emergency situations: 1) The police must have reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property. 2) The search must not be primarily motivated by intent to arrest and seize evidence. 3) There must be some reasonable basis, approximating probable cause, to associate the emergency with the area or place to be searched. People v. Dallas, 8 N.Y. 3d 890 (2007) (**Board Review 08**). When an officer determines that there is an imminent danger to child's life or health, they are to request the response of a patrol supervisor. If the patrol supervisor determines that the child's continued presence presents an imminent danger to the child's life or health, and there is not time to obtain a court order, the patrol supervisor is to remove the child from the home with consent from the child's parent or legal guardian. NYPD Patrol Guide, Procedure 215-03 (**Board Review 09**).

PO Polanco-Brito testified that upon arriving to the location, that neighbors confirmed that § 87(2)(b) who was dangerous and who had an open I-Card, lived at the location. She further testified that she believed, based on § 87(2)(b) responses, that § 87(2)(b) was inside of the apartment with § 87(2)(b) and presented a threat to her. However, the BWC shows that § 87(2)(b) provided no such information that would reasonably lead an officer to conclude that § 87(2)(b) was inside of the apartment and that despite PO Polanco-Brito's testimony, § 87(2)(b) spoke with no one besides PO Polanco-Brito and § 87(2)(b) on the phone. Furthermore, even assuming that § 87(2)(b) was a dangerous individual and was inside of the apartment, there was

no order of protection or anything barring him from being at the location or in contact with § 87(2)(b). Lastly, Sgt. Kim testified that he believed that § 87(2)(b) was in danger which was a contributing factor in his decision to enter the apartment. However, the emergency doctrine states that an officer cannot enter under the emergency doctrine if their motive is to arrest or seize evidence. PO Polanco-Brito testified that she went to the location to conduct a wellness check and to arrest § 87(2)(b) for an I-Card, and her BWC shows that the only conversation that PO Polanco-Brito had with § 87(2)(b) was about arresting her. Although § 87(2)(b) ultimately opened the door on her own, the BWC footage shows that PO Polanco-Brito coerced § 87(2)(b) to open the door by lying and stating that she had a warrant. Lastly, the BWC footage shows that upon Sgt. Kim arriving on scene, he asked PO Polanco-Brito if she had a warrant, and PO Polanco-Brito informed him that she had an I-Card. Sgt. Kim looked at the I-Card and then threatened to break down the door.

§ 87(2)(g) Furthermore, as a supervisor, it was Sgt. Kim's responsibility to obtain more information from PO Polanco-Brito and verify that PO Polanco-Brito was able to forcibly enter the apartment. Despite Sgt. Kim looking at the I-Card, he still threatened to break down the door and entered the apartment. § 87(2)(g)

Allegation E – Abuse of Authority: Sergeant Roy Kim damaged § 87(2)(b) property.

Allegation F – Abuse of Authority: Sergeant Roy Kim searched § 87(2)(b) in Manhattan.

Allegation G – Abuse of Authority: Police Officer Angela Polanco-Brito searched § 87(2)(b) in Manhattan.

Allegation H – Abuse of Authority: Police Officer Angela Polanco-Brito seized § 87(2)(b) property.

PO Polanco-Brito's BWC footage, starting at the 13:45 mark of the timestamp visible at the bottom of the screen, shows that after § 87(2)(b) exits the apartment the officers place her into handcuffs. Sgt. Kim asks § 87(2)(b) how many other people are inside of the apartment and § 87(2)(b) responds that no one is inside of the apartment. Sgt. Kim enters the apartment and asks § 87(2)(b) "What's behind this door?" § 87(2)(b) responds, "It's my friend's mom. You guys can break that too, I don't care." Sgt. Kim asks, "There's no one in here?" to which § 87(2)(b) responds that no one else is inside of the apartment. PO Polanco-Brito approaches Sgt. Kim who stands near the locked door and states that it might be the person they're looking for. The officers give commands to open the door and knock on it. Sgt. Kim asks § 87(2)(b) who is in the hallway of the building outside of the apartment, if there is a key to the door and she responds no, that her friends' mom lives there. At 15:04, PO Polanco-Brito tells Sgt. Kim, "§ 87(2)(a) PO Polanco-Brito tells Sgt. Kim that there is an open I-Card for him. Sgt. Kim asks if there is a warrant, however PO Polanco-Brito does not respond. PO Polanco-Brito states, "He's fucking dangerous too." Sgt. Kim asks if he is known to have weapons, but PO Polanco-Brito's response is unintelligible. The officers then discuss breaching the door. PO Polanco-Brito says that she is going to get cover and says to an officer, "This might be a fucking shooting." Sgt. Kim calls over the radio for ESU. The officers then draw their firearms. Sgt. Kim calls out to § 87(2)(b) who is outside of the apartment, and tells her that she needs to tell them if there is someone behind the door. § 87(2)(b) responds that there is no one inside and tells the officers to break the door. At 16:29, Sgt. Kim tells the officers, "Take the door." Officers then break open two doors that lead into the room and announce that the room is clear. The officers then re-holster their firearms. At 17:25, PO Polanco-Brito tells Sgt. Kim

that she needs § 87(2)(b) phone to voucher it. Sgt. Kim tells PO Polanco-Brito to check on the bed. At 17:58, PO Polanco-Brito exits the apartment and asks § 87(2)(b) where her phone is so that she can give it to her. § 87(2)(b) responds that she has two phones, but that she does not need her phone. PO Polanco-Brito tells § 87(2)(b) “You need your phone.” § 87(2)(b) tells PO Polanco-Brito that her phones are on her bed. An officer hands PO Polanco-Brito two phones from § 87(2)(b) room. § 87(2)(b) tells PO Polanco-Brito that the phones are broken and that her phone is on her bed. At 18:57, PO Polanco-Brito tells Sgt. Kim that Human Trafficking wants the phone to be vouchered. Sgt. Kim responds, “10-4.” At 19:55, PO Polanco-Brito takes a phone off § 87(2)(b) bed and says, “All of them are going to be vouchered.” The officers then leave the location **(Board Review 01)**.

Firearm drawn and discourtesy allegations that were captured on the BWC have not been pled as § 87(2)(b) was not inside of the apartment for the allegations and did not allege the allegations.

§ 87(2)(b) testimony was consistent with the BWC footage. She testified that once the officers were inside of the apartment, an officer asked § 87(2)(b) who lived in a room that had a door which was bolted shut. One officer broke down the door that was bolted shut. Another officer broke down the doors to § 87(2)(b) bedroom. Inside the tenant’s bedroom, there was a walk-in closet that the tenant had bolted shut. The officers broke this lock as well and went inside. The officers searched throughout the apartment and flipped over the bed in the locked bedroom. The officers looked through the tenant’s belongings and appeared to search everywhere in the apartment. The officers never said who they were looking for. PO Polanco-Brito asked if § 87(2)(b) needed her phone so that she could call § 87(2)(b) from the police station. § 87(2)(b) had two phones. PO Polanco-Brito grabbed different phones until § 87(2)(b) told her which one was her main phone. PO Polanco-Brito took the phone and stopped the recording of the incident. PO Polanco-Brito ultimately vouchered this phone, and it was never returned to § 87(2)(b) **(Board Review 02)**.

PO Polanco-Brito testified that prior to conducting the home visit, PO Polanco-Brito conferred with Det. Javish Ortiz of the Major Case Section who was conducting an extensive investigation into sex trafficking at the § 87(2)(b) residence. It was believed that § 87(2)(b) and § 87(2)(b) were both engaged in the trafficking of § 87(2)(b) § 87(2)(a) at some point. Det. Ortiz told PO Polanco-Brito that if she went to conduct a home visit for § 87(2)(b) and she had the chance to arrest § 87(2)(b) she should call Det. Ortiz. He added that PO Polanco-Brito should voucher as investigatory evidence any items § 87(2)(b) claimed were her own, including cell phones, laptops, electronic devices, tablets, notes, or photographs. Det. Ortiz did not indicate whether he was looking for a specific phone or document **(Board Review 03)**.

Det. Ortiz testified that he was investigating human trafficking allegations against § 87(2)(b) § 87(2)(b) PO Polanco-Brito saw that he was conducting an investigation and reached out to him. Det. Ortiz told PO Polanco-Brito that he could not provide much information about his investigation but added that he still needed evidence that would probably be in cell phones owned by § 87(2)(b) He asked her if she had any, but she did not. § 87(2)(b) had not been cooperative with Det. Ortiz or PO Polanco-Brito. After this incident, PO Polanco-Brito informed Det. Ortiz that she had obtained the cell phones that Det. Ortiz needed and vouchered them. Det. Ortiz did not remember how PO Polanco-Brito obtained these cell phones. Det. Ortiz needed the cell phones for his investigation with the Manhattan District Attorney’s Office, so he requested a search warrant for the contents of the phones **(Board Review 10)**.

Det. Ortiz’s DD5s show that he applied for a search warrant for the phones § 87(2)(b)

Sgt. Kim testified that while § 87(2)(b) was placed under arrest, Sgt. Kim and officers went into the apartment and walked to a closed bedroom inside of the apartment. Sgt. Kim gave verbal commands outside of the closed bedroom doors, including “open the door,” “come out,” and “let me see your hands.” Sgt. Kim did not recall hearing anything from the closed bedroom door or how many verbal commands he gave. § 87(2)(b) told Sgt. Kim that the officers could kick down the door if they wanted to. Sgt. Kim recalled § 87(2)(b) saying other things to the officers but she was unintelligible. Sgt. Kim and PO Michael Tierney forced the bedroom door open by kicking it together and walked inside of the bedroom. Sgt. Kim did not find § 87(2)(b) inside of the bedroom and did recall much about the bedroom. There was no indication that § 87(2)(b) was inside of the bedroom and Sgt. Kim did not recall seeing any male clothing, an open window, or any signs that § 87(2)(b) escaped. PO Polanco-Brito told Sgt. Kim that § 87(2)(b) cellphones needed to be vouchered as evidence. Sgt. Kim did not recall if § 87(2)(b) had the phones on her person during the incident. After reviewing PO Polanco-Brito’s BWC footage, Sgt. Kim acknowledged that PO Polanco-Brito said that the phones needed to be vouchered when he responded “10-04.” In the video, PO Polanco-Brito asks § 87(2)(b) about where the phones were. Sgt. Kim did not have a recollection of this and did not remember why he did not prevent PO Polanco-Brito from looking for these phones. Sgt. Kim did not know if PO Polanco-Brito had a warrant of any kind (**Board Review 04**).

The property voucher prepared by PO Polanco-Brito shows that she vouchered five phones as investigatory evidence (**Board Review 11**).

Police officers may damage property only if doing so is reasonably necessary to carry out their duties. Onderdonk v. State, 648 N.Y.S.2d 214 (1996) (**Board Review 12**). Searches and seizures inside a home without a warrant are presumptively unreasonable. Absent exigent circumstances, a warrantless entry to search for weapons or contraband is unconstitutional even when a felony has been committed and there is probable cause to believe that incriminating evidence will be found within. Payton v. New York, 445 U.S. 573 (1980) (**Board Review 13**).

Sgt. Kim testified that PO Polanco-Brito informed him that § 87(2)(b) was inside of the location and that he was wanted on an I-Card, but he stated that he was not aware of an order of protection or anything that barred § 87(2)(b) from being at the location. Once the officers gained entry, Sgt. Kim gave the order to open the bedroom door because he believed that § 87(2)(b) was at the location. Given that Sgt. Kim testified that § 87(2)(b) was wanted on an I-Card, and that there was nothing to his knowledge that barred § 87(2)(b) from being at the location, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

PO Polanco-Brito testified that prior to this incident, Det. Ortiz of Human Trafficking told her that if she arrested § 87(2)(b) at her home that she should voucher her phones. Det. Ortiz testified that he told PO Polanco-Brito that he needed evidence from § 87(2)(b) phone, and that PO Polanco-Brito later called him and stated that she obtained the phones. It is undisputed that the officers did not have a warrant and entered the location with an I-Card (See Allegations A-D). Had Det. Ortiz asked PO Polanco-Brito to voucher § 87(2)(b) phones as PO Polanco-Brito testified, PO Polanco-Brito should have evaluated the legality of obtaining the phones before searching around the apartment for § 87(2)(b) phones. The BWC footage shows that the phones were not on § 87(2)(b) person when she was arrested, and that PO Polanco-Brito searched the apartment after § 87(2)(b) was in custody. Furthermore, the BWC footage shows that § 87(2)(b) told PO Polanco-Brito that she did not want her phones, and that PO Polanco-Brito told § 87(2)(b) that

§ 87(2)(b) should have her phones, under the guise of being helpful. PO Polanco-Brito searched the apartment for § 87(2)(b) phones, which were not on her person at the time of arrest, without a warrant despite § 87(2)(b) telling PO Polanco-Brito that she did not want her phones.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been a party (**Board Review 14**).
- PO Polanco-Brito has been a member-of-service for 17 years and has been a subject in 14 additional complaints and 46 additional allegations, of which six have been substantiated.

§ 87(2)(g)

- 200614102 involved a substantiated allegation of force-pepper spray. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
- 200818612 involved a substantiated allegation of Discourtesy-word. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.
- 201016396 involved substantiated allegations of Force-Nightstick as Club and Abuse-Retaliatory Summons. The Board assigned charges. PO Polanco-Brito pled guilty and was suspended for 32 days and forfeited 20 vacation days as a result.
- 201510553 involved a substantiated allegation of Abuse-retaliatory summons. The Board recommended Command Discipline B and the NYPD imposed Command Discipline A.
- 201707574 involved a substantiated allegation of Discourtesy – Word. The Board assigned charges. PO Polanco-Brito was found guilty at trial and forfeited three vacation days.
- Sgt. Kim has been a member-of-service for 14 years and has been a subject in three additional CCRB complaints and five allegations, none of which have been substantiated.

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of July 18, 2022, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (**Board Review 15**).

• [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 06

Investigator: Inv. Thomas Juliano
Signature

Inv. Thomas Juliano
Print Title & Name

08/30/2022
Date

CCRB Case # 202105156

Squad Leader: __Jessica Pena
Signature

IM Jessica Peña
Print Title & Name

9/7/2022

Date